

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHAEL MCGREGOR, *et al.*,

Plaintiffs,

v.

SUFFOLK COUNTY, NEW YORK, *et al.*,

Defendants.

No. 2:23-cv-01130(GRB)(ARL)

**BRIEF OF DR. JACLYN SCHILDKRAUT AS *AMICUS CURIAE* IN SUPPORT OF
DEFENDANT SUPERINTENDENT NIGRELLI'S OPPOSITION TO PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

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INTEREST OF *AMICUS CURIAE*¹

Dr. Jaclyn Schildkraut, Ph.D. seeks to participate as *amicus curiae* because her extensive research and background as an international expert on mass shootings enables her to offer the Court unique and important information relating to New York’s semiautomatic rifle licensing law, N.Y. Penal Law § 400.00 (McKinney 2022). She is also a resident of New York who will be impacted by the enforcement or, as the plaintiffs would have it, restriction of the semiautomatic rifle licensing law.

Dr. Schildkraut is the Executive Director of the Regional Gun Violence Research Consortium at the Rockefeller Institute of Government. Prior to this appointment, she served as an Associate Professor of Criminal Justice at the State University of New York (SUNY) at Oswego. She is widely regarded as a leading national expert on mass shootings. She has published her acclaimed research in numerous academic and legal journals, including *American Journal of Criminal Justice*; *Crime, Law and Social Change*; *Criminology*, *Criminal Justice*, *Law & Society*; *Emory Law Journal*; and *Washington University Journal of Law & Policy*. Dr. Schildkraut has also authored and/or edited numerous books, book chapters, and policy briefs relating to mass shootings. As part of her research, Dr. Schildkraut has examined leakage by mass shooters in advance of perpetrating their crimes, including leakage via social media. “Leakage” is a term of art used in the context of threat assessment to describe communications of an intent to do to harm.

¹ Counsel for the parties have not authored this brief. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person—other than the *amicus curiae* and her counsel—made financial contributions that were intended to fund preparing or submitting this brief. Defendants have consented to the filing of this brief. Plaintiffs have indicated that they will oppose.

The concept of leakage as a warning behavior that precedes targeted violence has been the subject of substantial research for more than 20 years.²

Dr. Schildkraut files this Brief to explain the important impact that New York's licensing requirement for semiautomatic rifles could have on preventing gun violence by providing an opportunity to recognize mass shooters' pre-attack leakage and to summarize some of the evidence-based research regarding the potentially predictive nature of such leakage. This research supports licensing requirements for semiautomatic rifles as a protective measure to keep New Yorkers safer.

SUMMARY OF ARGUMENT

Since the massacre at Columbine High School on April 20, 1999, most mass shooters in the United States have leaked their intentions before carrying out their attacks.³ Research has shown that, in a variety of contexts, leakage provides insights into intended shooter behavior and that an examination of leakage can provide an early warning sign of potential future violence. Dr. Schildkraut and other academics' research into leakage is directly relevant to this issue because, among other reasons, mass shooters have applied for gun licenses before committing their violent offenses.⁴ New York's licensing requirements for semiautomatic rifles is designed to save lives in

² Mary Ellen O'Toole, *The School Shooter: A Threat Assessment Perspective*, Critical Incident Response Group, National Center for the Analysis of Violent Crime (2000); R.A. Fein & B. Vossekuil, *Preventing Assassination: A Monograph*, Secret Service Exceptional Case Study Project, National Institute of Justice (1997), <https://nij.ojp.gov/library/publications/preventing-assassination-secret-service-exceptional-case-study-project>.

³ *Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence*, Nat'l Threat Assessment Center, U.S. Secret Service, U.S. Dep't of Homeland Sec. (2019), https://www.secretservice.gov/sites/default/files/2020-04/Protecting_Americas_Schools.pdf; *Mass Attacks in Public Spaces: 2016-2020*, Nat'l Threat Assessment Center, U.S. Secret Service, U.S. Dep't of Homeland Sec. (2023), <https://www.secretservice.gov/sites/default/files/reports/2023-01/usss-ntac-maps-2016-2020.pdf>.

⁴ See Violence Pol'y Ctr.: Mass Shootings, <https://vpc.org/revealing-the-impacts-of-gun-violence/mass-shootings-2/> (last visited June 12, 2023); Violence Pol'y Ctr.: Concealed Carry Killers, <https://archive.ph/2GOBR#selection-383.1-387.16> (last visited June 12, 2023).

part by providing an opportunity for the state to identify whether the applicant presents a threat of harm to themselves or others if approved, and to use that information to stop shootings before they occur.

Studies have shown that firearm licensing laws save lives, reducing both gun homicides and gun suicides.⁵ Furthermore, research suggests that licensing laws that require an in-person application, or fingerprinting (as New York’s law does), make an even greater contribution towards preventing mass shootings—states with such laws have 56% *fewer* fatal mass shootings.⁶ As noted by Superintendent Nigrelli in his Memorandum of Law in Opposition to Plaintiffs’ Motion for a Preliminary Injunction, “The licensing requirement for semiautomatic rifles was enacted into law on June 6, 2022 (eff. Sept. 4, 2022) and was part of a comprehensive ten-bill legislative package that was aimed at closing critical gun law loopholes exposed in the tragic shootings in Buffalo and Uvalde.” Dr. Schildkraut’s research demonstrates the effectiveness of one piece of the licensing law: allowing for a more in-depth investigation to uncover incidents of leakage that could not be identified with a point-of-sale background check, and in turn, give the state an opportunity to intervene and save lives before a rifle purchase is completed.

ARGUMENT

A. Pre-Incident Leakage is a Critical Risk Factor Foreshadowing the Applicant’s Dangerousness

1. Peer-Reviewed Studies Have Shown That Acts of Violence Are Preceded By Leakage

Targeted violence is rarely impulsive or spontaneous; rather, ample research has shown that perpetrators of mass shootings have “follow[ed] a clear, discernible path toward targeted

⁵ Giffords Law Center, *Owner Responsibilities: Licensing*, <https://giffords.org/lawcenter/gun-laws/policy-areas/owner-responsibilities/licensing/>.

⁶ Daniel W. Webster, et al, “Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States,” *Criminology & Public Policy* 19, no. 1 (2020): 171–212.

violence,”⁷ which typically includes certain pre-attack warning behaviors that reveal a clear intention toward violence.⁸ Leakage—the communication to a third party of an intent to do future harm to a target—is one such warning behavior.⁹

The concept of leakage as a warning behavior that precedes targeted violence has been the subject of substantial research for more than 20 years.¹⁰ Leakage occurs when individuals are so consumed with thoughts of their fantasies and plans that they reveal clues—feelings, thoughts, attitudes, or intentions—that foreshadow their violent acts.¹¹ This may be intentional, such as when perpetrators crave attention or notoriety, or unintentional, as occurs when perpetrators are unable to contain or conceal their emotions and violent intentions.¹² Leakage can take different forms, including subtle threats, boasts, or innuendos, but the most severe forms of leakage publicize homicidal thoughts and/or an interest in mass killings.¹³ Leakage is a broad concept and the method of expression vary.

⁷ Jaclyn Schildkraut, Rebecca Cowan & Tessa M. Mosher, *The Parkland Mass Shooting and the Path to Intended Violence: A Case Study of Missed Opportunities and Avenues for Future Prevention*, 1 Homicide Studies (1-24) (2022).

⁸ See *id.* at 2.

⁹ See *id.* at 4.

¹⁰ Mary Ellen O’Toole, *The School Shooter: A Threat Assessment Perspective*, Critical Incident Response Group, National Center for the Analysis of Violent Crime (2000); R.A. Fein & B. Vossekuil, *Preventing Assassination: A Monograph*, Secret Service Exceptional Case Study Project, National Institute of Justice (1997), <https://nij.ojp.gov/library/publications/preventing-assassination-secret-service-exceptional-case-study-project>; Frederick S. Calhoun & Stephen W. Weston, *Contemporary Threat Management: A Practical Guide for Identifying, Assessing, and Managing Individuals of Violent Intent* (2003).

¹¹ See J. Reid Meloy & Mary Ellen O’Toole, *The Concept of Leakage in Threat Assessment* (2011); Jaclyn Schildkraut, *Mass Shootings: The Motives Vary, but the Path to Violence is Largely the Same*, RGRVC (June 3, 2022), <https://rockinst.org/blog/mass-shootings-the-motives-vary-but-the-path-to-violence-is-largely-the-same/> (citing “Protecting America’s Schools: A U.S. Secret Service Analysis of Targeted Violence”); Jaclyn Schildkraut & Glenn W. Muschert, *Columbine, 20 Years Later and Beyond: Lessons from Tragedy* (2019).

¹² *Id.* at 10-11.

¹³ See Adam Lankford, et al., *Are the Deadliest Mass Shootings Preventable? An Assessment of Leakage, Information Reported to Law Enforcement, and Firearms Acquisition Prior to Attacks in the United States* (2019) at 316, 330, 334.

Indeed, the research regarding leakage has been so widely accepted that the Federal Bureau of Investigation (“FBI”) has agreed that leakage is an important early warning signal of future violent acts, and that prompt attention to leakage could save lives.¹⁴ In a landmark report published in 2015, for example, the FBI stated that social media leakage “offers an often unparalleled view into the thoughts, feelings, plans and intentions of a person of concern,” and that it “can be a very effective source of information regarding the person’s mindset and future plans” that should “not [be] dismissed.”¹⁵

Leakage studies have gone beyond just a retrospective analysis, where a shooter’s intentions may become clear after engaging in the criminal act. More recent studies show that an examination of leakage can have predictive power. Peer-reviewed research studies confirm the linkage between social media leakage and acts of violence. For example, a study published in the Official Journal of the American Association of Suicidology in 2018 details how individuals who died by suicide showed strong coupling between triggers and cognitions in their pre-suicide social media posts. The study concludes that social media content may support an estimate of when a social media user is likely to attempt to commit suicide.¹⁶ Similarly, a 2019 study of 31 peer-reviewed articles found that teenagers and young adults frequently share risk factors for suicide with the public on social media platforms like Facebook and Twitter, and concluded that viewing social media accounts can help emergency department physicians identify people at risk for suicide.¹⁷

¹⁴ *Id.* at 330-32; *See* O’Toole, *supra* note 2.

¹⁵ *See* FBI, *Making Prevention a Reality: Identifying, Assessing, and Managing the Threat of Targeted Attacks* (2015), <https://www.fbi.gov/file-repository/making-prevention-a-reality.pdf/view> (last visited June 15, 2023).

¹⁶ Craig J. Bryan, et al., *Predictors of Emerging Suicide Death Among Military Personnel on Social Media Networks*, 48 *Suicide and Life-Threatening Behavior* (2018).

¹⁷ *See* Ali Pourmand, et al., *Social Media and Suicide: A Review of Technology-Based Epidemiology and Risk Assessment*, 25 *Telemedicine and e-Health* (2019).

Beyond its ability to predict harm to oneself, leakage has also been identified as a helpful tool that could be used to prevent future terrorist attacks. In *Leaking in Terrorist Attacks: A Review*, researchers concluded, based on their review of available international literature on religiously and politically motivated terrorist attacks, that up to 90% of terrorist attackers showed some form of pre-attack leakage, including leakage via communication over the Internet.¹⁸ Another recent study that examined court records relating to lone-actor terrorism cases in the United States concluded that 65.4% of lone actor terrorists had leaked their intentions to commit terrorism, including through online activities.¹⁹

The ability to use leakage to identify a risk of future violence—whether suicide or terrorism—applies equally to other violent, intentional acts like mass shootings and homicides.²⁰ Indeed, though averted tragedies are not frequently publicized, there have been reported instances of law enforcement successfully using leakage to thwart mass shootings and homicides.²¹ In 2020, for example, after the discovery of disturbing social media posts from a prominent technology company’s software engineer alluding to plans of a violent attack, law enforcement obtained a warrant, entered the engineer’s home, found illegally modified assault weapons and evidence of

¹⁸ Anne-Lynn Dudenhoefer, *Leaking in Terrorist Attacks: A Review*, 58 *Aggression and Violent Behavior* (2021).

¹⁹ Menna Rose & John Morrison, *An Exploratory Analysis of Leakage Warning Behavior in Lone-Actor Terrorists*, *Behavioral Sciences of Terrorism and Political Aggression* (2021).

²⁰ See *id.* at Abstract (“Leakage is one of the eight warning behaviors referred to in the violence risk and threat assessment literature.”); Schildkraut & Muschert, *supra* note 11 (“one of the most important clues that foreshadows an event like [the] Columbine [school shooting] is leakage”); O’Toole (observing the study of leakage in predicting other violent acts is suggestive, but has been limited by the less than uniform definition of the term).

²¹ *Averting targeted school violence: A U.S. Secret Service analysis of plots against schools*, Nat’l Threat Assessment Center, U.S. Secret Service, U.S. Dep’t of Homeland Sec. (2021), <https://www.secretservice.gov/sites/default/files/reports/2021-03/USSS%20Averting%20Targeted%20School%20Violence.2021.03.pdf>.

online searches for locations of public figures, and successfully prevented any violent attack.²² As another example, one year earlier, in 2019, authorities arrested men in Connecticut and Ohio allegedly planning two unrelated mass shootings, after receiving tips from the public about alleged threats.²³ Similarly, leakage where a cohabitant is the intended or inadvertent recipient of the communication has averted tragedies. For example, in 2019, authorities arrested a man in Massachusetts after his roommate heard him talking about carrying out a shooting spree.²⁴ Similarly, in March 2020, a son told his mother that he was going to “point [an] unloaded gun at the police” so they would shoot him. The mother reported her son’s intention to police, which successfully averted the son’s suicide-by-cop mission by removing the gun from his possession and hospitalizing the mother’s son for mental health concerns.²⁵

These examples are not outliers; mass shooters frequently engage in the same types of leakage before engaging in their criminal conduct, and such observable behavior on social media or from cohabitants thus represents “critical opportunities for detection and disruption.”²⁶

²² See Heather Stringer, *Empowering Communities to Prevent Mass Shootings: Psychology Research is Informing New Strategies to Reach People at Risk of Committing a Violent Act*, 53 Monitor on Psychology (2022).

²³ See Jim Shay & Pat Tomlinson, *Police: Tips Prevented 3 Potential Mass Shootings, Including 1 in CT*, Conn. Post (Aug. 19, 2019), <https://www.ctpost.com/local/article/Police-Tips-prevented-3-potential-mass-shootings-14342621.php>.

²⁴ See *Cambridge Man Faces Ammunition Charges After Talking About Shooting Sprees*, CBS News (Mar. 7, 2019), <https://www.cbsnews.com/boston/news/cambridge-brian-schwarztrauber-charged-ammunition-shooting-sprees>.

²⁵ See *Killer in Indianapolis FedEx shooting browsed white supremacist websites, police say*, NBC News (Apr. 20, 2021), <https://www.nbcnews.com/news/asian-america/killer-indianapolis-fedex-shooting-browsed-white-supremacist-websites-rcna728> (while the police were able to avert this act of intended firearm violence, the following year, in April 2021, the same individual obtained two assault rifles that he used to kill eight victims and injure seven more at a FedEx facility).

²⁶ Lankford at 331, *supra* note 13.

2. Most Mass Shootings Have Been Preceded by Leakage

Decades of extensive research in the fields of criminology, threat assessment, and psychology confirm that leakage precedes the vast majority of mass shootings. A mass shooting is generally defined as a shooting incident that involves multiple shooting victims (both injuries and fatalities) at one or more public or populated locations, with the victims and locations chosen either at random or for symbolic value, exclusive of gang violence or targeted militant or terroristic activity.²⁷ Recently published research, supported by the Regional Gun Violence Research Consortium, reports that, of 318 mass public shooters between 1966 and 2017, 40% engaged in pre-attack leakage.²⁸ Similarly, a descriptive, archival study of 34 adolescent (19 years of age or younger) mass murderers, acting alone or in pairs between 1958 and 1999, concluded that the majority made threats about committing mass murder before carrying out their violent acts.²⁹ Meanwhile, a study of a nonrandom sample of 30 mass murderers in North America from 1948 to 1998 likewise found that more than two-thirds of mass murderers leaked specific or general threats about their intentions before committing violent crimes.³⁰

More current research concerning mass shooters has yielded consistent findings. A 2019 report from the U.S. Secret Service, for example, found that more than 75% of school shooters communicated their intentions ahead of any attack.³¹ In 2018, the FBI, with the assistance of the

²⁷ See RGVRV, Mass Shooting Factsheet, at Definition, <https://rockinst.org/gun-violence/mass-shooting-factsheet/> (last visited Jan. 16, 2023).

²⁸ Joel A. Capellan, et al., *Deconstructing Mass Public Shootings: Exploring Opportunities for Intervention*, RGRVC (Oct. 2019), <https://rockinst.org/wp-content/uploads/2019/10/10-24-19-Deconstructing-Mass-Shootings-Brief-1.pdf>.

²⁹ J.R. Meloy, et al., *Offender and offense characteristics of a nonrandom sample of adolescent mass murderers*, 40 *Journal of the American Academy of Child and Adolescent Psychiatry* 719-728 (2001).

³⁰ A.G. Hempel, et al., *Offender and offense characteristics of a nonrandom sample of mass murderers*, 27 *Journal of the American Academy of Psychiatry and the Law* 213-225 (1999).

³¹ Schildkraut, *Mass Shootings*, *supra* note 11 (citing “Protecting America’s Schools: A U.S. Secret Service Analysis of Targeted Violence”).

Bureau's Behavioral Analysis Unit, published *A Study Of The Pre-Attack Behaviors Of Active Shooters In The United States Between 2000 And 2013*. That study concluded that 56% of active shooters from 2000–2013 leaked their violent thoughts or intentions pre-incident.³² Another study published in 2018, in the academic peer-reviewed journal *Aggression and Violent Behavior*, found that, of 115 public mass murders occurring between 1990 and 2014, 58% of the perpetrators leaked violent intentions before committing their crimes.³³ In 2019, the *Journal of Contemporary Criminal Justice* published a study of the 15 *deadliest* public mass shootings in the United States occurring between March 1998 and February 2018. The study concluded that 87% of the deadliest public mass shooters leaked violent thoughts or intentions prior to their attacks, and 80% of these shooters leaked their specific intentions to engage in mass killings.³⁴

These pieces of evidence regarding pre-shooting leakage are consistent with Dr. Schildkraut's own research findings. Last year, Dr. Schildkraut authored a case study of the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, in the peer-reviewed journal *Homicide Studies*. Dr. Schildkraut reviewed numerous studies regarding leakage before school shootings, and countless pages of documents retrieved via open-access records and a FOIA request of Broward County that showed the extensive leakage that preceded this particular shooting. Dr. Schildkraut's study concluded that leakage is common both before school shootings and *averted* school shootings.³⁵ For example, the National Threat Assessment Center published a study in 2021 that concluded that *nearly all* (94%) 67 averted school attack plotters examined in

³² J Silver, et al., *A study of the pre-attack behaviors of active shooters in the United States between 2000 and 2013*, FBI (2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf>.

³³ J. Silver, et al., *Foreshadowing targeted violence: Assessing leakage of intent by public mass murderers*, 38 *Aggression and Violent Behavior*, 94-100 (2018).

³⁴ Lankford at 322-23, *supra* note 13.

³⁵ Schildkraut, Cowan & Mosher, *supra* note 7 (citing O'Toole); Fein & Vossekuil, *supra* note 2.

its study leaked their intentions ahead of their attack.³⁶ Similarly, in connection with the extensive research that Dr. Schildkraut conducted in support of her 2019 book, *Columbine, 20 Years Later And Beyond: Lessons From Tragedy*, she examined the crucial role of leakage in foreshadowing mass shootings, and highlighted even more studies that concluded that leakage occurs in a large majority of mass shooting and targeted school violence cases.³⁷

In yet another tragic example, pre-shooting leakage occurred prior to the mass shooting that took place at Tops Friendly Market in Buffalo New York on May 14, 2022. Less than a year before the Buffalo shooter shot and killed 10 people and injured 3, while he was a high school senior, he and his classmates were asked about plans for after graduation. The Buffalo shooter responded that he planned to commit murder-suicide.³⁸ While he later claimed to school officials that he was joking, and briefly submitted to a psychiatric evaluation, he graduated weeks later, and not long after became entirely devoted to planning a highly lethal mass shooting. Online, the Buffalo shooter shared that he “had to go to a hospital’s ER because I said the word’s ‘murder/suicide’ to an online paper in economics class” but “I got out of it,” “because I stuck with the story that I was getting out of class and I just stupidly wrote that down.”³⁹ He continued, “It

³⁶ *Id.*, *Supra* note 7 (citing *Averting targeted school violence: A U.S. Secret Service analysis of plots against schools*, Nat’l Threat Assessment Center, U.S. Secret Service, U.S. Dep’t of Homeland Sec. (2021), <https://www.secretservice.gov/sites/default/files/reports/2021-03/USSS%20Averting%20Targeted%20School%20Violence.2021.03.pdf>)

³⁷ See Schildkraut & Muschert at 59-60, 64, *supra* note 11.

³⁸ Ashley Southall, Chelsia Rose Marcius & Andy Newman, *Before the Massacre, Erratic Behavior and a Chilling Threat*, N.Y. Times (May 15, 2022), <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>; Jillian Forstadt, *Broome County district attorney confirms Buffalo shooting suspect talked about murder-suicide*, WSGK Public Broadcasting (May 17, 2022), <https://www.wskg.org/news/2022-05-17/broome-county-district-attorney-confirms-alleged-buffalo-gunman-talked-about-murder-suicide>; Vince Briga, *Accused Buffalo killer spoke about murder, suicide in class last year, DA says*, Spectrum News 1 (May 18, 2022), <https://spectrumlocalnews.com/nys/central-ny/news/2022/05/18/accused-buffalo-killer-spoke-about-murder-suicide-in-2021>.

³⁹ Shimon Prokupecz et al., *What we know about Buffalo supermarket shooting suspect Payton Gendron*, CNN (June 2, 2022), <https://www.cnn.com/2022/05/15/us/payton-gendron-buffalo-shooting-suspect-what-we-know/index.html>.

was not a joke,” “I wrote that down because that’s what I was planning to do.”⁴⁰ Despite this leakage, the Buffalo shooter was permitted to purchase the Bushmaster XM15-E2S semiautomatic rifle that he used in the shooting mere months after threatening murder. And, even after the purchase, the Buffalo shooter continued to leak his plans. He traveled to the grocery store where he intended to commit his attack in advance, drawing a map of its aisles, and was confronted by a security guard in the process.⁴¹ He also posted “thousands of entries” to a “months-long online diary” on the social media platform Discord that were later shared more widely on 4Chan.⁴² The Buffalo shooter used the platform to map out his attack for months before live-streaming the shooting on Twitch.⁴³ According to Discord, approximately 30 minutes prior to the massacre, the Discord log was published to a group of people who the Buffalo shooter invited to join.⁴⁴

Other recent mass shooters have similarly leaked their plans prior to perpetrating deadly events. Ten days after the Tops shooting, on May 24, 2022, a shooter at Robb Elementary School in Uvalde, Texas, killed 21 and injured 17 with an AR-15 rifle, after leaking his intentions by posting on Facebook, Instagram, and Yubo.⁴⁵ Many other deadly mass shootings in the last year

⁴⁰ *Id.*

⁴¹ Jon Swaine & Dalton Bennett, *Buffalo shooting suspect wrote of plans 5 months ago, messages show*, The Washington Post (May 16, 2022), <https://www.washingtonpost.com/investigations/2022/05/16/buffalo-shooting-previous-supermarket-confrontation/>.

⁴² See Mark Kungariello, *Alleged Buffalo shooter Payton Gendron’s plans were shared online 30 minutes before deadly racist attack: report*, N.Y. Post (May 18, 2022), <https://nypost.com/2022/05/18/alleged-buffalo-shooter-payton-gendrons-plan-shared-online-just-before-attack>.

⁴³ *Id.*

⁴⁴ Odette Yousef, *The Buffalo shooting suspect’s online footprint prompts questions about red flags*, NPR (May 20, 2022), <https://www.npr.org/2022/05/20/1100200267/the-buffalo-shooting-suspects-online-footprint-prompts-questions-about-red-flags>.

⁴⁵ See Silvia Foster-Frau, et al., *Before massacre, Uvalde gunman frequently threatened teen girls online*, Tex. Tribune (May 28, 2022), <https://www.texastribune.org/2022/05/28/uvalde-shooting-gunmen-teen-girls>; Resse Oxner, *Uvalde gunman legally bought AR rifles days before shooting, law enforcement says*, Tex. Tribune (May 25, 2022), <https://www.texastribune.org/2022/05/25/uvalde-shooter-bought-gun-legally>.

were preceded by leakage. For example, the parents of the shooter who killed three children and three adults at Christian Covenant School in Nashville, Tennessee “felt the shooter should not own weapons.”⁴⁶

There are also examples of possible threats that have been stopped when leakage is identified, including in New York. In March 2023, a potential shooter posted on the social media platform Discord that “1-2” “[k]ills” were “[e]xpected” at “Tops, Manlius” in the next week.⁴⁷ Once authorities were alerted of the threat, an extreme risk protection order was signed by the judge, permitting the potential shooter’s weapons to be confiscated. Similar actions have occurred in other parts of the country. For example, in December 2022, the FBI received a tip that a college student had made a post on a Discord server that had a number of messages with “extreme controversial ideology and potentially other illegal content.” The post itself consisted of a picture of a firearm and the caption “600 W College Ave, Tallahassee, FL 32306, At 13:00 December 17, 2022 100 (expletive) Will Die, Cya there!”⁴⁸ The FBI stopped and arrested the student at the Orlando International Airport. The student said that he got the picture of the gun from Reddit.com and only mentioned the specific address because he thought it would get the most reactions from the Discord server. He told his interviewing officers that the post was a joke and that he did not

⁴⁶ Natalie Musumeci & Grace Eliza Goodwin, *The Nashville school shooter’s parents thought the assailant shouldn’t have guns, but the shooter bought 7 guns legally and hid them, police say*, Insider (Mar. 28, 2023), <https://www.insider.com/nashville-shooting-parents-thought-shooter-shouldnt-own-guns-police-2023-3> (alternation marks omitted); *see also* The Associated Press, *Nashville school shooter had drawn maps, done surveillance*, The Dallas Morning News (Mar. 27, 2023), <https://www.dallasnews.com/news/2023/03/27/suspect-dead-after-shooting-at-nashville-private-school> (describing the planning that preceded the shooting).

⁴⁷ *See* Douglass Dowty, *Jamesville man charged with threat of mass shooting at Manlius Tops; guns confiscated*, Syracuse.com (Mar. 14, 2023), <https://www.syracuse.com/crime/2023/03/jamesville-man-charged-with-threat-of-mass-shooting-at-manlius-tops-guns-confiscated.html>.

⁴⁸ *See* FOX 35 Orlando, *Orlando-area man threatened mass shooting at FSU targeting LGBTQ community, FBI alleges* (Jan. 5, 2023), <https://www.fox35orlando.com/news/orlando-area-man-threatened-mass-shooting-at-fsu-targeting-lgbtq-community-fbi-alleges>.

actually intend to engage in a mass shooting. Multiple articles referenced the student's increasingly controversial statements online as well as a number of his confrontations with peers, both in person and online.⁴⁹

These are just some of the many examples of how perpetrators of mass shootings routinely leak their violent intentions, providing overt warning of their hateful thoughts and their desire to inflict violence in advance of their attacks. These warnings are not confined to the dark corners of the web, nor are they limited to the moments immediately preceding an attack—rather, in mass shooting after mass shooting, perpetrators have left extensive trails conveying their specific desire to shoot and kill for the world to see. Dr. Schildkraut's research, like the research cited above, confirms that mass shooters and others planning mass violence typically leak their intentions in advance of an attack. Consequently, a licensing system that allows the state to identify pre-incident leakage that could be used to help avert mass shootings and other acts of violence.

B. Licensing Laws Allow More In-Depth Investigations that can Uncover Leakage

Mass shootings are typically associated with longer planning periods: nearly all of the 15 deadliest mass shootings in the United States from March 1998 to February 2018 were planned for six months or longer.⁵⁰ These long latency periods can be filled with lengthy trails of leakage, but law enforcement can only act on this evidence if it becomes aware of it. Licensing laws provide a unique ability to detect these warning signs.

⁴⁹ See Kiara Alfonseca, *Florida man arrested for alleged mass shooting threat against LGBTQ people*, ABC News (Jan. 5, 2023), <https://abcnews.go.com/US/florida-man-arrested-alleged-mass-shooting-threat-lgbtq/story?id=96238029>.

⁵⁰ See Lankford at 331, *supra* note 13.

Under both state and federal law, a point-of-sale background check must be conducted before a firearm can be transferred.⁵¹ This background check queries the National Instant Criminal Background Check System (NICS), a federal database maintained by the FBI, which lists individuals who are disqualified from possessing a firearm.⁵² While a critical mechanism to screen out individuals attempting an illegal firearm purchase, these background checks do not include any investigatory steps beyond a search of NICS. They cannot detect leakage.

The investigative process outlined in New York’s semiautomatic rifle licensing law is different. It requires that applicants provide information about close contacts, character references, and social media accounts, and empowers law enforcement to investigate each of these sources of information to determine whether the applicant will use a semi-automatic rifle “only in a manner that does not endanger oneself or others.”⁵³ This means that law enforcement will have the information, opportunity, and time to ask individuals who personally know the applicant about potentially troubling behaviors, and to monitor and review social media accounts for threats and other indications of murderous thoughts or plans. The semi-automatic rifle licensing law thus allows for a more thorough investigation into channels in which leakage can be detected.

Empirical research shows that licensing laws, and the fuller investigative process they provide, can be effective at reducing gun violence. When Connecticut implemented a licensing law, it saw its homicide rate decrease by 28%; while Missouri, upon repealing a licensing requirement, experienced a 47% increase.⁵⁴ Licensing laws are associated with an 11% decrease

⁵¹ 18 U.S.C. § 922(t); N.Y. Gen. Bus. Law § 898. Federal law requires a background check when the seller holds a federal firearm license, while state law also requires a background check in the case of most transfers by non-licensees.

⁵² 18 U.S.C. § 922(t); *see generally About NICS*, FBI, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>.

⁵³ N.Y. Penal Law § 400.00(1)(o); *id.* § 400.00(4); *id.* § 400.00(1)(b).

⁵⁴ Alexander D. McCourt, et al, *Purchaser Licensing, Point-of-Sale Background Check Laws, and Firearm Homicide and Suicide in 4 US States, 1985–2017*, 110 Am. J. Public Health 1546–1552 (2020).

in firearm homicides at the county level, based on a study of 80 urban counties.⁵⁵ And at the state level, states with strong licensing laws have 56% fewer mass shootings than states without them.⁵⁶

The investigations enabled by New York's licensing law will give law enforcement opportunities to discover leakage and to act on it, preventing acts of mass violence while they are still being planned. Mass shootings have been stopped when authorities discover the leakage that preceded them; and they have happened when the authorities have failed to find it. The semi-automatic licensing law is a powerful tool to detect shootings and stop them, and New Yorkers will be safer for it.

CONCLUSION

As demonstrated by research and available statistics concerning mass shootings and leakage, New York's semiautomatic rifle licensing law could result in prevention of mass shootings by providing an opportunity for the state to capture leakage before permitting rifle purchases.

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⁵⁵ Cassandra K. Crifasi, et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. Urban Health 383–390 (2018).

⁵⁶ Daniel W. Webster, et al, *Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 Criminology & Public Policy 171–212 (2020).